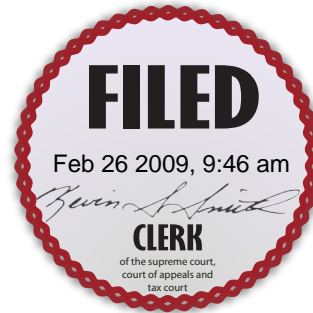


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**IN THE
COURT OF APPEALS OF INDIANA**

ROBERT E. JARRETT,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 73A04-0807-CR-414

APPEAL FROM THE SHELBY CIRCUIT COURT
The Honorable Charles D. O'Connor, Judge
Cause No. 73C01-0603-FC-3

February 26, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Robert Jarrett (Jarrett), appeals his conviction for battery resulting in serious bodily injury, a Class C felony, Ind. Code § 35-42-2-1(a)(3).

We affirm.

ISSUE

Jarrett raises one issue for our review, which we restate as: Whether the State presented sufficient evidence to convict him of battery resulting in serious bodily injury, a Class C felony, beyond a reasonable doubt.

FACTS AND PROCEDURAL HISTORY

On March 4, 2006, Jarrett and Dennis Clark (Clark), who had known each other for a number of years, returned to Jarrett's apartment after having drinks at Big Jim's Tavern in Shelbyville, Indiana. While at the apartment, a fight ensued between the men. Clark punched Jarrett in the side of the head. Jarrett then punched Clark on his chin, knocking him to the floor.

At this time, Crystal Wood (Wood) and Corey Wooten (Wooten) were sitting in a van, which was parked in a drugstore parking lot across the street from Jarrett's apartment. Wood and Wooten observed Jarrett dragging Clark by his feet down the stairs leading out of Jarrett's apartment. Wood and Wooten then watched as Jarrett kicked Clark multiple times in his head, chest and stomach, before slamming Clark's head in the door of the apartment building.

Wood called 911 before crossing the street to find Clark slouched on the ground and unresponsive for approximately ten minutes. Clark was taken to the emergency room where doctors stapled closed a laceration on the back of his head. Clark's eyes were blackened and swollen shut, his tooth was knocked out, and his jaw was swollen. The emergency room doctor who examined Clark upon his arrival admitted Clark to the hospital's intensive care unit. Doctors prescribed Vicodin for Clark's pain.

On March 6, 2006, the State filed an Information charging Jarrett with battery resulting in serious bodily injury, a Class C felony, I.C. § 35-42-2-1(a)(3). On April 7 through 8, 2008, the trial court conducted a jury trial. At the trial, the State presented several witnesses, including the emergency room doctor who treated Clark on the day of the incident, and Wood and Wooten, who testified as to the events they had witnessed outside Jarrett's apartment. The jury convicted Jarrett of battery resulting in serious bodily injury, a Class C felony. On May 9, 2008, the trial court sentenced Jarrett to five years in the Department of Correction, with three years executed and the balance suspended. Jarrett was also ordered to pay certain court and administration fees, as well as \$6,750 restitution to Clark.

Jarrett now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Jarrett argues that the State did not present sufficient evidence to sustain his conviction for battery resulting in serious bodily injury, a Class C felony, beyond a reasonable doubt. Jarrett presents two arguments: (1) the State did not present sufficient

evidence to negate Jarrett's self-defense claim; and (2) the State did not present sufficient evidence that Clark suffered serious bodily injury.

Our standard of review with regard to sufficiency claims is well settled:

In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. We will consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. A conviction may be based upon circumstantial evidence alone. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense.

Perez v. State, 872 N.E.2d 208, 212-13 (Ind. Ct. App. 2007), *trans. denied* (citations omitted).

Likewise, we recently determined that “[t]his court reviews a challenge to sufficiency of the evidence to rebut a self-defense claim under the same standard as any sufficiency of the evidence claim. That is, the verdict will not be disturbed if there is sufficient evidence of probative value to support the conclusion of the trier of fact.” *Boyer v. State*, 883 N.E.2d 158, 162 (Ind. Ct. App. 2008).

I. *Self-Defense Claim*

Jarrett argues that when he injured Clark, he was engaged in a lawful act of self-defense. Indiana Code section 35-41-3-2 provides: “A person is justified in using reasonable force against another person or a third person from what the person reasonably believes to be the imminent use of unlawful force.” In order to prevail on a self-defense claim, Jarrett must have established three facts: (1) he was in a place where he was entitled to be; (2) he acted

without fault; and (3) he had a reasonable fear of death or great bodily harm. *Wallace v. State*, 725 N.E.2d 837, 840 (Ind. 2000). Furthermore, despite the ability of a self-defense claim to justify an otherwise criminal act, “the force used must be proportionate to the requirements of the situation.” *McKinney v. State*, 873 N.E.2d 630, 643 (Ind. Ct. App. 2007), *trans. denied*.

Once a defendant has established a self-defense claim, “the State bears the burden of disproving at least one of these elements beyond a reasonable doubt.” *Miller v. State*, 720 N.E.2d 696, 700 (Ind. 1999). “The State may meet this burden by rebutting the defense directly, by affirmatively showing the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief.” *Id.* Likewise, “[w]hether the State has met its burden is a question of fact for the jury.” *Id.* Furthermore, the jury “is not precluded from finding that a defendant used unreasonable force simply because the victim was the initial aggressor.” *Hood v. State*, 877 N.E.2d 492, 497 (Ind. Ct. App. 2007), *trans. denied*.

Jarrett maintains that he successfully established those facts necessary to support a self-defense claim at trial. First, the uncontradicted testimony was that Jarrett was in his own apartment, a place where he had a right to be. Second, Jarrett contends that he acted without fault as he only hit Clark after Clark first punched him. Third, Jarrett asserts that he had a reasonable fear of harm, as Clark punched him for no apparent reason. Therefore, according to Jarrett, it was reasonable for him to believe that Clark could potentially attack him again. Furthermore, Jarrett maintains that the force he used against Clark was proportionate to the

requirements of the situation, as once again, he only struck Clark after Clark first struck him. Jarrett contends that his only goal was to get Clark away from him.

At trial, the jury was only presented with Jarrett's account of what happened within Jarrett's apartment before the two men went outside. While Jarrett testified that Clark punched him unexpectedly, Clark testified that he did not remember the events of that day, as he had experienced memory loss as a result of his injuries, had been knocked out for a period of six hours, and had been drinking prior to the incident. As mentioned above, it is not the role of this court to "reweigh the evidence or judge the credibility of the witnesses." *Perez*, 872 N.E.2d at 213. Instead, it is enough that we find that the State produced substantial and credible evidence from which the jury could reasonably conclude that Jarrett did not act in self-defense when he battered Clark.

"The amount of force which is reasonably necessary to defend oneself is determined from the standpoint of the accused in light of the surrounding circumstances." *Geralds v. State*, 647 N.E.2d 369, 373 (Ind. Ct. App. 1995). However, it is important to note that "[w]here a person has used more force than is reasonably necessary to repel an attack, the right of self-defense is extinguished." *Id.* The testimonies of Wood and Wooten recounting the events outside of Jarrett's apartment support the conclusion that any claim of self-defense that Jarrett may have had was extinguished when he dragged Clark down the stairs, repeatedly kicked him, and then slammed his head in a door. As a result of these actions, Clark was admitted to the intensive care unit, and was unconscious for a number of hours. Assuming that Jarrett was correct in his contention that his initial punch was justified,

Jarrett's subsequent actions were no longer proportional to Clark's alleged "sucker punch." Based on the testimonies of Wood and Wooten, it was reasonable for the jury to conclude that Clark no longer posed a threat to Jarrett, and furthermore, that Jarrett's subsequent actions were not proportional to Clark's initial punch. Based on our review of the record as a whole, we conclude that the State did present sufficient evidence to rebut any self-defense claim offered by Jarrett beyond a reasonable doubt.

II. *Serious Bodily Injury*

In order to convict Jarrett of battery resulting in serious bodily injury, a Class C felony, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally touched Clark in a rude, insolent, or angry manner, which resulted in serious bodily injury to Clark. I.C. § 35-42-2-1(a)(3). Our determination of what evidence is sufficient to prove that an individual suffered serious bodily injury at the hand of another is aided by our legislature's definition of that term. Indiana Code section 35-41-1-25 provides: "'Serious bodily injury' means bodily injury that creates a substantial risk of death or that causes: (1) serious permanent disfigurement; (2) unconsciousness; (3) extreme pain; (4) permanent or protracted loss or impairment of the function of a bodily member or organ; or (5) loss of a fetus." "Whether bodily injury is 'serious' has been held to be a matter of degree and therefore a question reserved for the factfinder." *Young v. State*, 725 N.E.2d 78, 82 (Ind. 2000).

In reviewing the record before us, we note that the trial court was presented with the testimony of several witnesses who provided firsthand accounts of the incident, and the

events that occurred immediately thereafter. Wood and Wooten had observed Jarrett drag Clark's body down a flight of stairs by his feet, knocking Clark's head on each successive stair along the way. The two then saw Jarrett repeatedly kick Clark, and slam Clark's head in the door before returning to his apartment. Wooten testified that during this time, Jarrett appeared to be dragging a "dead body," as Clark was not struggling or trying to defend himself in any way (Transcript p. 151). When Wood approached Clark following the incident, he lay unconscious for approximately ten minutes.

Furthermore, the emergency room doctor testified as to the severity of Clark's head injury, and his decision to admit Clark to the hospital's intensive care unit for continued observation. Clark testified that before waking up in the hospital, the last thing he remembered about the incident was standing at the top of the stairs outside Jarrett's apartment six hours earlier. We conclude that this was sufficient evidence to prove that Jarrett's actions caused Clark to lose consciousness, thereby establishing "serious bodily injury" for purposes of his Class C felony conviction.

CONCLUSION

For all of the foregoing reasons, we conclude that the State presented sufficient evidence to convict Jarrett of battery resulting in serious bodily injury.

Affirmed.

DARDEN, J., and VAIDIK, J., concur.